FILE COPY

Office-Supreme Court, U.S.
FILED
JUN 13 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 787

STATE ATHLETIC COMMISSION,
Appellant,

versus

JOSEPH DORSEY, JR.,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

PETITION FOR REHEARING ON BEHALF OF APPELLANT.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Capitol,
Baton Rouge, Louisiana;
GEORGE PONDER,
First Assistant Attorney General,
State of Louisiana,
Capitol,
Baton Rouge, Louisiana;
WILLIAM P. SCHULER,
Assistant Attorney General,
Supreme Court Building,
New Orleans 12, Louisiana,
Attorneys for State Athletic Commission,
Appellant.

M[illegible] & Co., "The Brief Specialists", 430 Chartres St., N. O., La.

INDEX.

	Page
GROUND FOR REHEARING	1
CONCLUSION	7
CERTIFICATE OF SERVICE PURSUANT TO RULE 33 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES	8
CERTIFICATE OF COUNSEL PURSUANT TO RULE 58 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES	9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 787

STATE ATHLETIC COMMISSION,
Appellant,

versus

JOSEPH DORSEY, JR.,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division.

PETITION FOR REHEARING ON BEHALF OF APPELLANT.

GROUNDS FOR REHEARING.

The Court should have entertained an appeal in this matter and granted the relief sought by appellant in the jurisdictional statement filed herein in order that the issues raised in the jurisdictional statement might be considered after briefing and oral argument before this Court.

The matters for consideration herein represent the problem of construction, interpretation, and application of the tenth, eleventh and fourteenth amendments to the U. S. Constitution.

(a) The sole defendant, as previously pointed out, was the Louisiana State Athletic Commission which is not an individual, nor a corporate entity authorized by the Legislature to sue or be sued. It is simply a bureau or agency of the State of Louisiana and as such, not a juridical person.

Appellant has already conceded and must continue to so concede that under a long line of jurisprudence, this suit might have been instituted against the members of the Athletic Commission if they were either exceeding their legal authority or acting under powers conferred by an unconstitutional statute. A careful study of the Federal jurisprudence convinced appellant that a suit directed solely against it was prohibited by the mandatory provisions of the eleventh amendment to the United States Constitution.

Maybe this Court did not feel that the interpretation of the jurisprudence by appellant was valid or presented a substantial question as to the jurisdiction of the district court. Possibly the Court believed that the cases cited by appellee decided by the fourth and fifth[1] circuits represents federal jurisprudence as a whole. Appellant pointed out earlier that the logic used in these cases is doubtful, and the following cases point up the fact that other Courts agree with appellant that an agency or administrative body may not be sued.

---

[1] School Board of Charlottesville v. Allen, 240 F. (2d) 59 (C. A., 4, 1956); Orleans Parish School Board v. Bush, 242 F. (2d) 156 (C. A., 5) Cert. den., 1957, 354 U. S. 921.

The Louisiana Land and Exploration Company v. State Mineral Board, 229 F. (2d) 5 (CA, 5, 1956):

"This brings us to a consideration of appellant's second point which is that the Eleventh Amendment is inapplicable and does not bar the present suit against a State agency which wrongfully has exceeded its statutory authority. **This contention is likewise without merit for the reason that the complaint is directed against the State Mineral Board in its official capacity, not against its members individually,** and because the acts complained of are not without, but clearly within the Board's statutory power." (Emphasis supplied).

Blackmar v. Guerre, et al., 342 U. S. 512, 72 S. Ct. 410 (1952):

"Since the Civil Service Commission is not a corporate entity which Congress has authorized to be sued, a suit involving the action of the Commission generally must be brought against the individual Commissioners as members of the United States Civil Service Commission. No such suit was brought here, and no service was had upon the individuals comprising the Civil Service Commission. Therefore, neither the individuals comprising the Civil Service Commission nor the Commission as a suable entity was before the District Court." (Emphasis supplied).

Aerated Products Co. of Philadelphia, Pa. v. Department of Health of New Jersey, et al., 159 F. (2d) 851, (C. A., 3, 1947):

"The Eleventh Amendment of the Federal Constitution denies to federal courts the jurisdiction over

suits against a State by citizens of another State. The Department is a part of the executive branch of the New Jersey government. Revised Statutes of New Jersey of 1937, 26:-2-1, et seq., N.J.S.A.; Board of Health v. Mundet Cork Corporation, 1939, 126 N. J. Eq. 100, 8 A. (2d) 105, affirmed 1940, 127 N. J. Eq. 61, 11 A. (2d) 260. **Consequently, we agree with the court below that plaintiff's suit against the Department is prohibited by the Eleventh Amendment.** Ford Co. v. Department of Treasury, 1945, 323 U. S. 459, 65 S. Ct. 347, 89 L. Ed. 389.

"As to Mahaffey, the rule is equally clear that **his function as a public official brings him within the protection of the Eleventh Amendment only if the statutes authorizing his actions are constitutional, and if his actions do not exceed the authority granted him.** Baldwin v. G. A. F. Seelig, 1935, 294 U. S. 511, 55 S. Ct. 497, 79 L. Ed. 1032, 101 A.L.R. 55. If the activities of Mahaffey are in violation of a right guaranteed by the federal Constitution, this court has jurisdiction to enjoin such violation." (Emphasis supplied).

United States Department of Agriculture, et al., v. Hunder, et al., 171 F. (2d) 793, (C. A., 5, 1949):

"While cases may be found in which a department or bureau of the Government has been suffered to assert rights, **the Department of Agriculture is not truly a juridical person, being neither an individual nor a corporation. It is an agency of the Government, not empowered to sue, or to be sued in**

evasion of sovereign immunity. See United States Dept. of Agriculture v. Remund, 330 U. S. 539, 541, 67 S. Ct. 891, 91 L. Ed. 1082. The Secretary however is a person. If he by affirmative act exceeds his lawful authority or threatens to do so, to the injury of established rights, he may be enjoined, for in such circumstances he is not truly representing the Government." (Emphasis supplied).

New Haven Public Schools v. General Services Administration, 214 F. (2d) 592, (C. A., 7, 1954):

"It is admitted that the two defendants dismissed by the District Court are agencies of the executive branch of the United States government. In other words, they are administrative departments of the government. **It has long been established that such agencies are not truly juridical persons but are strictly representatives of the government, who may not be sued in evasion of sovereign immunity.** United States Dept. of Agriculture v. Remund, 330 U. S. 539, 541, 67 S. Ct. 891, 91 L. Ed. 1082; Herren v. Farm Security Administration, 8 Cir., 153 F. (2d) 76; Thomason v. Works Progress Administration, 9 Cir., 138 F. (2d) 342; North Dakota-Montana Wheat Growers' Ass'n v. United States, 8 Cir., 66 F. (2d) 573, 92 A. L. R. 1484, certiorari denied 291 U. S. 672, 54 S. Ct. 457, 78 L. Ed. 1061."

"Plaintiff seeks to escape the effect of this rule for the reason, as it argues, that the suit is controlled by decisions in actions rightfully brought against individual governmental officers. It is fatal, we

think, to this contention that no officers were named as parties or served with process. Indeed, such officers are subject to suit only in the District of Columbia. Blackmar v. Guerre, 342 U. S. 512, 72 S. Ct. 410, 96 L. Ed. 534. The District Court properly held that it did not have and could not entertain jurisdiction over the agencies." (Emphasis supplied).

As a result of the action of this Court in affirming the judgment of the District Court without opinion, the law with regard to the application and construction of the eleventh amendment is confused and unsettled. It is impossible to determine whether the previous jurisprudence, some of which is cited hereinabove, has been overruled, disregarded as not applicable or distinguished. In the interest of justice to the State of Louisiana as well as conformity and certainty in the interpretation and construction of the eleventh amendment, it is incumbent upon this Court to decide this matter by written opinion after full and complete briefing and argument thereon.

(b) There can be no doubt that the area of endeavor encompassed herein is entirely foreign to the matters previously decided by this Court, and that the regulation of professional boxing is within the police power of the State conferred by the tenth amendment to the United States Constitution. In addition to the cases already cited by appellant, the courts of Rhode Island and Georgia have held that the permission to engage in contests of this nature confers no right of which one may be deprived.

Zannelli v. Di Sandro, et al., 121 A. (2d) 652 (Sup. Ct., R. I., 1956);

Ward v. Drennon, et al., 40 S. E. (2d) 549 (Sup. Ct., Ga., 1946).

CONCLUSION.

Considering the argument and jurisprudence set forth in this petition as well as that in the jurisdictional statement and opposition to Motion to Affirm, it is submitted that this Court should reconsider its ruling affirming the District Court and entertain appellant's jurisdictional statement and place this suit upon the appellate docket of this Court, and after a briefing and rehearing thereon reverse the judgment of the District Court.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana,
Capitol,
Baton Rouge, Louisiana;

GEORGE PONDER,
First Assistant Attorney General,
State of Louisiana,
Capitol,
Baton Rouge, Louisiana;

WILLIAM P. SCHULER,
Assistant Attorney General,
Supreme Court Building,
New Orleans 12, Louisiana,
Attorneys for State Athletic Commission,
Appellant.

PROOF OF SERVICE.

I, William P. Schuler, one of the attorneys for Louisiana State Athletic Commission, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of June, 1959, copies of the foregoing Petition for Rehearing on behalf of appellant were served on the plaintiff herein by mailing same in duly addressed envelopes with first class postage prepaid to his attorneys of record, as follows:

To Louis Berry,
4226 South Central Avenue,
Los Angeles 11, California (Air Mail);

To Israel M. Augustin, Jr.,
Prudhomme F. DeJoie,
1470 No. Claiborne Avenue,
New Orleans 16, Louisiana;

To Thurgood Marshall,
Jack Greenberg,
Suite 1790,
10 Columbus Circle,
New York, N. Y. (Air Mail).

WILLIAM P. SCHULER,
Assistant Attorney General,
State of Louisiana.

CERTIFICATE OF COUNSEL.

I, William P. Schuler, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

.....

Counsel for Petitioner.